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WAC 458-16-1000 Property belonging to federally recognized Indian tribes - Definitions - Exemption - Declaration process - Appeal rights. (1) Introduction. This section implements Substitute House Bill 1322 (SHB 1322) as passed by the 2004 legislature and published in the 2004 regular session laws as Chapter 236. SHB 1322 amends RCW 84.36.010 to exempt real and personal property belonging exclusively to any federally recognized Indian tribe located in the state if it is used exclusively for essential government services. This section explains the exemption, how the exemption may be obtained, how a tribe may appeal a denial of the exemption, and how essential government services is defined.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Assessor" means a county assessor or any person authorized to act on behalf of the assessor.

(b) "Cessation of use" means that a tribe ceased to use exempt real property for essential government services. The term also refers to property that has lost its exempt status because it was sold or transferred to an owner or user not entitled to a property tax exemption.

(c) "Contiguous property" means real property adjoining other real property, all of which is under the control of a single taxpayer even though the properties are separated by public roads, rights of way, or waterways.

(d) "Declaration" means the exemption declaration filed by an Indian tribe with the assessor's office to claim the property tax exemption authorized in RCW 84.36.010.

(e) "Department" means the department of revenue.

(f) "Essential government services" means services provided by government including, but not limited to, tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation, and utility services. See Subsections (4) and (5) below that outline more complete and detailed examples of "essential government services" for the purposes of this section.

(g) "Federally recognized Indian tribe," "Indian tribe," or "tribe" means any Indian nation, tribe, band, community, or other entity within the state that is recognized as an "Indian tribe" by the United States Department of the Interior. The phrase "federally recognized Indian tribe" and the term "tribe" have the same meaning as "Indian tribe." See WAC 458-20-192 for more explicit information regarding these defined terms.

(h) "Homogeneous unit" means the property is controlled by a single taxpayer and the operation and use of the property is integrated with and directly related to the essential government services provided by the Indian tribe.

(i) "Indian country" has the same meaning as given in WAC 458-20-192 and 18 U.S.C. 1151. It means:

(A) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation;

(B) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

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(C) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

(j) "State" means the state of Washington.

(3) **Exemption.** All real and personal property belonging exclusively to any federally recognized Indian tribe located in the state that is used exclusively for essential government services is exempt from property tax. For property to qualify for this exemption two conditions must be satisfied. The property must: (1) belong exclusively to a federally recognized Indian tribe located in the state; and (2) be used exclusively for essential government services.

(a) **When do the amendments to RCW 84.36.010 take effect?** The effective date of the amendments is June 10, 2004. After that date an Indian tribe may file an exemption declaration for property granted exemption under RCW 84.36.010 as amended by Chapter 236. Such a declaration must be filed with the assessor of the county in which the property is located. A declaration filed in 2004 is applicable to taxes due in 2005.

(b) **How a tribe may claim this exemption - exemption declaration required.**

(i) **Declaration form - how it may be obtained.** An Indian tribe claiming the property tax exemption described in this section must submit an exemption declaration and supporting documentation regarding the ownership and use of the property to the assessor of the county in which the property is located. The declaration must be on a form prescribed by the department and signed by an authorized agent of the tribe. This information will be used to determine whether the property qualifies for exemption. An exemption declaration may be obtained from any assessor's office, from the department, or downloaded from the state's internet site under the agency index for Revenue at <http://dor.wa.gov/>.

(ii) **Exemption declaration - filing deadline.** Declarations must be filed with the assessor on or before December 31st to exempt property for taxes due in the following year. One exemption declaration must be submitted for all real property that is contiguous and part of a homogeneous unit. If exemption is sought for multiple parcels of real property that are not contiguous nor part of a homogeneous unit, a separate exemption declaration must be submitted for each parcel.

(iii) **Other documentation a taxpayer may be required to submit with exemption declaration to determine eligibility.** In addition to the exemption declaration, a taxpayer may be asked to submit the following information regarding the real or personal property for which exemption is sought to determine the *amount* of and eligibility for the exemption:

(A) An accurate description of the real and personal property including a legal description of all real property, listing the county tax parcel number, and a copy of the current deed;

(B) An accurate map identifying by dimension the use of all real property that shows buildings, building sites, parking areas, landscaping, vacant areas, and floor plans of the buildings. *This map or floor plans* will be used to determine whether the property is entitled to a total or partial exemption based upon the use of the total area;

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(C) If the property is rented or loaned to another party, a copy of the rental agreement or other document explaining the terms of the lease or loan. This documentation must describe:

- (I) What property is rented or loaned;
- (II) The name of the party to whom the property is rented or loaned; and
- (III) How the property is being used.

(iv) **Assessor's review of exemption declaration and notice of exemption determination.** Upon receipt of the exemption declaration the assessor will review the declaration and all supporting documentation. Additional information may be requested about the ownership and use of the property, if the assessor needs this information to determine whether the property qualifies for exemption. An exemption declaration is not considered complete until the assessor receives all required information. The assessor shall determine the taxable status of the property within ninety days of receipt of the completed declaration. The assessor may deny the exemption declaration, in whole or in part, if he or she believes the property does not qualify for exemption. If the exemption declaration is denied for any portion of the property, the assessor must clearly state the reason(s) for denial in the written determination. A denial may be appealed, as explained in subsection (11).

(v) **When will the property be exempt from payment of taxes?** If an exemption declaration is approved, the property is exempt from property taxes due the year immediately following the year the declaration is submitted.

(4) **Essential government services as defined in RCW 84.36.010.** For the purposes of this section, "essential government services" mean services such as tribal administration, public facilities, fire, police, public health, education, sewer, water, environmental and land use, transportation, and utility services. Property used exclusively for essential government services includes property:

- (a) Providing access to water or land as is reasonably necessary to the exercise of established treaty rights by a tribe or tribal members;
- (b) Used for the protection and stewardship of shoreline, watershed, or other environmentally sensitive areas;
- (c) Used for the preservation of historically or culturally significant sites;
- (d) Used for forest lands;
- (e) Used for parking lots or garages ancillary to property used exclusively for essential government services. For example, a parking lot adjacent to a courthouse is used for an essential government service. A parking lot or garage adjacent to a commercial or enterprise activity does not qualify for exemption; and
- (f) Used for utility services provided by a utility company providing services to residents of Indian country, as defined in subsection (2), is property used for an essential government service. The property of a utility company that provides services to an area extending outside of Indian country and that receives a majority of its funding from user fees does not qualify for exemption.

(5) **Examples regarding essential government services.** The following examples identify a number of facts and then state a conclusion. These examples should be used

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only as a general guide. All examples assume exclusive ownership of the property by a federally recognized tribe.

(a) A tribe has a courthouse and associated administrative offices. The land is used for essential government services.

(b) A tribe has a police station, fire station, hospital, public schoolhouse, and a bookstore located on one parcel of land exclusively owned by the Tribe. The police station, fire station, hospital, and schoolhouse are all examples of qualifying essential government services as defined in RCW 84.36.010. On the other hand, the bookstore is a commercial or enterprise activity and does not meet the essential government services test. It is a nonqualified use and the portion of the parcel on which it is located will be administratively segregated by the assessor for the purposes of taxation.

(c) A tribe acquires off-reservation land along the headwaters of a stream flowing into the reservation. The land is maintained as a conservation zone, limiting pollution and protecting water quality. The land is used for essential government services.

(d) A tribe operates a fish hatchery. The hatchery is not operated or financed in a manner similar to a private business enterprise. The property is used for essential government services.

(e) A tribe operates a fish cannery and processing center in a manner similar to a private profit seeking enterprise. The property is not used for essential government services.

(f) A tribe maintains a boat launch and an adjacent boat storage facility that primarily serves tribal members. The fees charged to either launch or store a boat are nominal. The tribe provides evidence that the activity is priced below market, is heavily subsidized by the tribe, and does not compete with any private enterprise. Also, the tribe demonstrates that the boat launch and boat storage facility are services otherwise unavailable in the region. The property is used for essential government services.

(5) **Can an exemption be claimed for prior years - Refunds?** A tribe may submit an exemption declaration for previous years, up to a maximum of three years from the date taxes were paid on the property, if the taxpayer provides the assessor with acceptable proof that the property qualified for exemption during the pertinent assessment years. If the exemption is granted, the tribe must submit a refund claim to the county treasurer. RCW 84.69.020(2) and 84.69.030. However, no exemption can be claimed for any time period prior to 2004, the first assessment year affected by RCW 84.36.010 as amended by *Chapter 236*.

(6) **Sale, transfer, or cessation of use of exempt property.** If a tribe sells or transfers property or ceases to use real property for an essential government service as required under RCW 84.36.010, the exemption will be cancelled as of the date the property was sold or transferred or the exempt use of the property ceased. Real property that no longer retains its exempt status will be assessed a pro rata portion of the taxes allocable to the property for the remaining portion of the tax year after the date the property lost its exempt status. If only a portion of the property has lost its exempt status, only that portion of the property is subject to tax. See RCW 84.40.350 through 84.40.390 for a more complete explanation of what occurs when the status of real property changes from exempt to taxable.

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(a) **Duty to notify assessor.** A tribe must notify the assessor of any change in the ownership or use of the property that might affect its exempt status within sixty days of the date of the change. If any portion of the exempt property is loaned or rented, the owner is required to report this change to the assessor because the loan or rental may affect the taxable status of the property. Any other person who knows or has information regarding a change in ownership or use of exempt property is to notify the county assessor of any such change. The assessor may physically inspect exempt property after being notified about a change in the ownership or use of exempt property. Upon receipt of this notification, the assessor will determine whether the property retains its exempt status.

(b) **Notice to owner.** The assessor must notify the current owner of the exempt property that the exemption is being removed as a result of the change in *use of the property*. The tribe may appeal the removal of the exemption within thirty days of receiving this notice, at the same time the tribe can provide additional information to the assessor. The additional information may cause the assessor to change the determination to cancel the exemption.

(c) **Appeal rights.** A taxpayer who contends the assessor mistakenly cancelled the exemption may appeal this determination to the county board of equalization. See Subsection (12) below for more information regarding appeals.

(7) **Property jointly owned by an Indian tribe and another individual or entity used exclusively for essential government services - Eligibility for exemption.** For the purposes of this exemption, the holding by the state supreme court in City of Kennewick v. Benton County, 131 Wash.2d 768 (1991) regarding RCW 84.36.010 and the "exclusively owned" standard will be followed but exclusive use for essential government services is still required. The court granted an exemption to the extent of public ownership. The standard announced in that case allows the exemption to be granted on a percentage of ownership basis. For the purposes of this exemption, the percentage of the property exclusively owned by a tribe and used exclusively for essential government services is eligible for exemption.

(8) **Property used for qualifying and non-qualifying purposes - Mixed use of property - Eligibility for exemption.** If property is exclusively owned by an Indian tribe and used simultaneously for qualifying and non-qualifying purposes and if the two uses are physically separate on the real property, the assessor shall administratively segregate the portion of the property that is used exclusively for essential government services and exempt that portion of the property from property tax. The portion of the property that is used for non-qualifying uses is subject to taxation.

(a) An administrative segregation occurs when the assessor separates the exempt value from the taxable value. The assessor may create a new tax parcel number that exists solely for property tax purposes.

(b) Example: a Tribal administrative office may be located in the same building as a store run as a commercial enterprise. The portion of the building used for Tribal administration is exempt and the portion of the building used as a store will be taxable.

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(c) If the property is used at times for exempt or qualifying purposes and at other times for nonexempt purposes, the "exclusively used" standard is not met and the property is taxable.

(9) **Property owned by an Indian tribe that is leased - Eligibility for exemption.** If property exclusively owned by an Indian tribe is leased to an individual, a for-profit or nonprofit *entity*, a tribal member, or another governmental entity, the tenant's or lessee's activities will determine whether the property qualifies for exemption. If the activity involved is not an essential government service the property does not qualify for exemption. On the other hand, if the property is used exclusively to provide an essential government services it qualifies for exemption.

(10) **Property used for commercial or enterprise activities - Eligibility for exemption.** Property used for commercial or enterprise activities does not qualify for exemption. For purposes of this section, a "commercial or enterprise activity" means an activity financed and operated in a manner similar to a private business enterprise. If an activity is operated in a manner similar to a private business enterprise, the burden is upon the tribe to prove that the property is not used for commercial or enterprise activities.

(a) The collection of a user fee, such as a small fee for the use of the picnic area in a park, does not automatically make an activity a commercial or enterprise activity.

(b) Property used for a commercial or enterprise activity will not qualify for the exemption even when funds received from the activity are used to provide essential government services. For example, if a tribe exclusively owns property that is used for the operation of a gas station, the property will not qualify for the exemption based on the fact that profits from the gas station are used to pay for essential government services.

(11) **Appeal rights.** If a tribe files an exemption declaration with an assessor and the exemption is not granted (in whole or in part), the tribe may appeal this denial in several ways. The taxpayer may file an appeal with the county board of equalization under RCW 84.40.038 within the time frame specified in that statute. If the exemption declaration is also denied by the board of equalization, the tribe may appeal this denial to the state Board of Tax Appeals under RCW 84.08.130. The tribe may also bring suit in superior court or in any federal court of competent jurisdiction after payment of the tax under protest in accordance with RCW 84.68.020.

(a) **Board of Equalization.** A board of equalization (board or BOE) may review all determinations made by the assessor relative to a real or personal property exemption or a determination canceling an existing exemption. RCW 84.48.010. The appeal process to the BOE is set forth in RCW 84.40.038 and in chapter 458-14 WAC. A copy of this statute and the chapter of rules may be obtained from the assessor's office or downloaded from state's internet site under the agency index for the Code Reviser under <http://search.leg.wa.gov/>.

(b) **Board of Tax Appeals.** Under RCW 84.08.130, any taxpayer, taxing unit, or assessor that feels aggrieved by the action of any county BOE may appeal the determination to the board of tax appeals (BTA) by filing with the BTA a notice of appeal. The duties, responsibilities, and jurisdiction of the BTA are outlined in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC. RCWs 84.08.130 and chapter 82.03

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RCW, as well as chapters 456-09 and 456-10 WAC, can be obtained from the BTA or downloaded from its internet site <http://bta.state.wa.us/>

(i) A notice of appeal must be submitted within thirty days of the postmark date on the BOE's decision or the date on which notice of the decision was given to the taxpayer, whichever is later.

(ii) A notice of appeal can be obtained from the BTA or downloaded from the BTA's internet site.

(c) **Payment under protest requirements - Court appeals.** A tribe's right to pay taxes under protest and appeal for a court ordered refund are set forth in chapter 84.68 RCW and WAC 458-18-215. In order to preserve the right to bring suit in court for a refund, a taxpayer must at the time of payment of the tax, submit to the county treasurer a written protest setting forth all of the grounds upon which all or a portion of the tax is claimed to be unlawful or excessive and otherwise comply with the provisions of RCW 84.68.020. The refund suit must be filed by June 30th of the year following payment of the tax. Copies of pertinent statutes and rules are available from the county treasurer or may be downloaded from the state's internet site under the agency index for Revenue.